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STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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Illinois Commerce Commission  
RAIL SAFETY SECTION

UNION PACIFIC RAILROAD COMPANY )  
)  
Petitioner, )  
)  
vs. ) TO1-0040  
)  
)  
TOWNSHIP OF GENEVA, STATE OF ILLINOIS )  
and the ILLINOIS DEPARTMENT OF )  
TRANSPORTATION, )  
)  
Respondents. )

**GENEVA TOWNSHIP HIGHWAY COMMISSIONER**  
**JOHN CARLSON'S PRETRIAL REPORT**

NOW COMES THE RESPONDENT, GENEVA TOWNSHIP HIGHWAY COMMISSIONER, JOHN CARLSON (hereinafter "Highway Commissioner"), by and through his attorneys, BOND, DICKSON & ASSOCIATES, P.C., and presents this Pretrial Report in compliance with the Scheduling Order For Hearing on Commission Questions.

As a prefatory matter, the Highway Commissioner objects to further proceedings in this cause, which is before the Illinois Commerce Commission (hereinafter the "ICC") now on a petition for rehearing of its September 4, 2003 Order denying the Petition to Close the Subject Crossing. As was set forth by the Illinois Supreme Court in *Meinhardt Cartage Co. v. Illinois Commerce Commission*, 15 Ill. 2d 546, 155 N.E.2d 631 (1959), the purpose of a rehearing is not to seek reconsideration of the entire proceeding, but to point out and have corrected mistakes of law or fact, or both, which the movant claims the ICC has made in reaching its decision. If the applicant for rehearing seeks to allege new facts, the application must be filed with a verification. Ill. Admin. Code, tit. 83, Section 200.880(c). In its application for rehearing, the Petitioner specifically stated there were no new facts it sought to set forth in support of its application.

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However, the hearing called for in the Scheduling Order will now be the second evidentiary hearing allowed since the September 14, 2003 order of the ICC.

As an additional prefatory matter, the Highway Commissioner states that the segment of Old Kirk Road north of the Subject Crossing is now under the jurisdiction of the City of Geneva, as a result of the City's annexation of property east of this segment of Old Kirk Road. The Highway Commissioner, however, remains in opposition to the closing of the Subject Crossing as it affects the portion of Old Kirk Road south of the Subject Crossing, which remains under his jurisdiction, and on behalf of the business owners north of the Subject Crossing and west of Old Kirk Road, who will be impacted by any closing of the Subject Crossing, and on behalf of Kane County and the Kane County Forest Preserve District, all of whom object to the closing of the Subject Crossing

The Illinois Commerce Commission directs a supplementary hearing to address three questions on the Petition. The Scheduling Order sets forth seven (7) questions for which answers are required to be provided in the Pretrial Memorandum. The questions and answers are as follows:

**(a) An estimate of how long the evidentiary hearing will take.**

One day.

**(b) A list of the safety issues, if any, that affect whether the crossing should be closed.**

1. There have been no accidents at the Subject Crossing in the last five years, or in recent history.

2. In the last twenty (20) years, the Geneva Fire Department has not responded to an incident involving the Subject Crossing.

3. Closing the crossing will result in significant detriment to the businesses north of the Subject Crossing, and south of Illinois Route 38 because closing the Subject Crossing will result in Illinois Route 38 being the only ingress/egress point for the businesses, employees and

vendors of this area.

4. Illinois Route 38 is already a recognized traffic concern, currently being addressed by IDOT and Kane County.

5. Current plans for reconstruction of Illinois Route 38 call for installation of a median at the intersection of Old Kirk Road and Illinois Route 38, which will then allow only a right turn in/right turn out movement for travelers headed north on Old Kirk Road. If the Subject Crossing is closed this will result in significant adverse travel distances.

6. A water distribution system does not extend south of the Subject Crossing. Any fire in the area will require transportation of water by tankers using the hydrant at Reed Road and Old Kirk Road. This will impact fire safety to the residents of the area, and further indicates that closing the crossing will require fire crews to seek hydrants on the Kane County Events Center as an alternative.

7. Closing the crossing could lengthen emergency response time to residents south of the Subject Crossing and north of Cherry Lane.

**(c) A statement of the party's position on whether each of the criteria for crossing closure enumerated in 92 Ill. Adm. Code 1536.20 apply to this crossing.**

At the time of the prior hearings in this cause, the criteria applied was that associated with a crossing located in an unincorporated area, which was not signalized. At that time, because the Subject Crossing and affected roadway were in an unincorporated area, criteria under 1536.20(h)(i)(2) would have applied; however the expert for the Highway Commissioner argued that, because of the actual area involved, delineation of requirements based on whether a particular property was in an unincorporated or incorporated area was not the most appropriate way to determine which adverse distance criteria should be used. Therefore, at prior hearings, the Highway Commissioner argued that the area in question, as to adverse distance calculations, should be viewed under the criteria set forth in 1536.20(h)(i)(1), rather than (h)(i)(2). The Subject Crossing and part of the affected roadway are now located in an incorporated town, thus, the criteria of 1536(h)(i)(1) would be appropriate to apply, and, under this criteria, the adverse distance to travel militates against closing the Subject Crossing.

All other criteria apply to the Subject Crossing. In this regard, the evidence has established that the crossing does not meet the criteria for closing under 1536.20(d)1 -3, (e), (g), and (i). Further, under the provisions of 1536.20(j), the totality of the evidence does not require the crossing to be closed, and the public convenience served by the crossing in question justifies its further retention.

**(d) If the party seeks closure of the crossing, a list of all the bases for the closure that are not included in 92 Ill. Adm. Code 1536.20.**

This question is not applicable to the Highway Commissioner.

**(e) A brief statement of the specific relief sought by the party and how the Commission's questions affect that relief.**

The Highway Commissioner seeks an order of the ICC denying the Petition to close the Subject Crossing. Analysis of the evidence adduced at the hearings in this cause, and of the answers provided by the parties to the questions set forth at this juncture in this proceeding, should result in an order of the ICC denying the relief requested by the Petitioner. Specifically, in this regard, the closing of the Subject Crossing will directly, negatively, impact the health, safety and welfare of the residents who are located north of the Subject Crossing and south of Illinois Route 38. Closing the Subject Crossing will result in Illinois Route 38 being the only ingress/egress point for these residents, which will negatively impact them in the following ways: (1) their safety, if the ingress/egress at Illinois Route 38 is blocked and a need for emergency aid occurs, (2) increased travel times, now, because of the recognized traffic concerns associated with Illinois Route 38 in its current state, and (3) increased travel times if Illinois Route 38 is reconstructed, as planned, to allow only right in, right out traffic at the intersection, which will eliminate all west-bound travel from Old Kirk Road. Closing the Subject Crossing will also negatively impact the use of Old Kirk Road as a travel alternate for Kane County Events Center, which draws more than 500,000 people to its events, and it has been opposed by both the Kane County Forest Preserve District and the Kane County Division of Transportation.

**(f) A list of the party's proposed witnesses.**

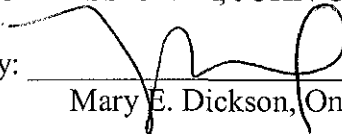
Assuming that all prior testimony may be used in argument, and will be considered by the ICC in rendering its decision, the Respondent will call as witnesses only its traffic consultant, Brent Coulter, and Steven Pasinski, the Assistant County Engineer and Deputy Director of the Kane County Division of Transportation. If prior testimony is not considered, the Highway Commissioner may call as witnesses each individual who has previously provided testimony in this cause.

**(g) A list of the party's proposed exhibits.**

Assuming that all prior exhibits may be used in argument, and will be considered by the ICC in rendering its decision, the Respondent will submit as additional exhibits the contract plans for the reconstruction of Illinois Highway 38. If prior evidence is not considered, the Highway Commissioner will seek to introduce all prior exhibits used in this proceeding.

Respectfully Submitted,

GENEVA TOWNSHIP HIGHWAY  
COMMISSIONER, JOHN CARLSON

By: 

Mary E. Dickson, One of his Attorneys

BOND, DICKSON & ASSOCIATES, P.C.  
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ILLINOIS COMMERCE COMMISSION


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	)	
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**NOTICE OF FILING**

To: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 15th day of November, 2004, the Respondent, GENEVA TOWNSHIP HIGHWAY COMMISSIONER JOHN CARLSON, filed an original and three copies of his Pretrial Report via Federal Express to David Lazarides, Director of Processing and Information, Illinois Commerce Commission, 527 E. Capitol Avenue, Springfield, Illinois 62794-9280. A copy of this document is attached hereto and herewith served upon you.

GENEVA TOWNSHIP HIGHWAY COMMISSIONER  
JOHN CARLSON

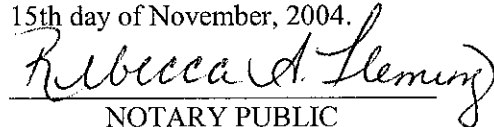
By:   
Mary E. Dickson, One of his Attorneys

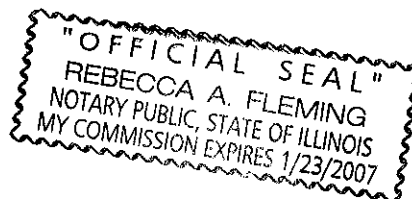
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**PROOF OF SERVICE**

I, Mary E. Dickson, an attorney, state that I served this Notice of Filing and document referred to therein upon the individuals named on the attached Service List via U.S. Mail, with proper postage prepaid, and via electronic transmission to Bernadette Cole on this 15th day of November, 2004.

Signed to and sworn before me this  
15th day of November, 2004.

  
NOTARY PUBLIC



**SERVICE LIST**  
Case No. T01-0040

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Mr. Steve Pasinski  
Deputy Director  
Kane County Division of Transportation  
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